

GAHC010081082023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2127/2023

DEBABRATA GOGOI, AFS
S/O LATE PADMESWAR GOGOI, R/O SADANANDA APARTMENT, FLAT NO.
503 (B-BLOCK), LAKHIMI PATH, BY-LANE NO. 2, BELTOLA, P.S.-HATIGAON,
DIST-KAMRUP (M), ASSAM, PIN-781028

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM, ENVIRONMENT AND FOREST DEPARTMENT,
DISPUR, ASSAM, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6

3:DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
ASSAM
DISPUR
GUWAHATI-6

4:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-37

5:AS PER HON'BLE COURT ORDER DATED 21.04.2023

RESPONDENT NO.5 IS STRUCK OF

Advocate for the Petitioner : MR. T J MAHANTA

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 03-05-2023

Heard Mr. T.J. Mahanta, the learned Senior Counsel assisted by Mr. P.P. Dutta, the learned counsel for the petitioner and Mr. D. Gogoi, the learned Standing Counsel appearing on behalf of the Forest Department.

2. It is the case of the petitioner herein that on 3/8/2022 while the petitioner was posted at Lakhipur Range, Cachar Division, Silchar, the petitioner was arrested in connection with ACB P.S. Case No. 22/2022 under Section 7A of the Prevention of Corruption Act, 1988 on the alleged ground of demand of bribe. Subsequent thereto, on the basis of an order dated 9/9/2022, the Special Judge, Assam granted the petitioner bail. When the fact pertaining to the arrest of the petitioner came to the notice of the disciplinary authority, the petitioner vide a notification dated 20/9/2022 was put under suspension pending drawal of the disciplinary proceedings in exercise of the power under Rule 6(2) of the Assam Service(Discipline and Appeal) Rules, 1964(for short 'the Rules of 1964). The petitioner thereupon on various occasions submitted representations for reinstatement. However, the respondent authorities continued to keep the petitioner under suspension. It is the case of the petitioner that till date, the

Memorandum of Charge/ the Chargesheet has not been served upon the petitioner and therefore the continuation of the suspension order beyond the period of 3 months is in violation to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India** reported in (2015) **7 SCC 291**. It is in that premises the instant writ petition has been filed.

3. This Court vide order dated 21/3/2023 issued notice making it returnable on 28/4/2023. This Court further sought the instructions from the learned counsel appearing on behalf of the Forest Department as to whether any departmental proceedings has been initiated against the petitioner. Further to that, as to whether the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary (supra)** has been complied with.

4. Today when the matter has been taken up, the learned Standing counsel appearing on behalf of the Forest Department with all fairness submitted that till date no memorandum of charge/the chargesheet has been served upon the petitioner. He further submitted that till date the respondent authorities have not taken any steps for the purpose of initiation of departmental proceedings.

5. At this stage, this Court finds it relevant to take note of paragraph No. 21 of the judgment of the Supreme Court in **Ajay Kumar Choudhary (supra)** which is reproduced hereinunder :

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this

will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

6. The above quoted paragraph of the said judgment makes it clear that the currency of a suspension order should not be more than 3 months, if the memorandum of charge/chargesheet have not been served upon the delinquent employee. It was further made clear that if the Memorandum of Charge/cChargesheet had in the meantime been served then there has to be a reasoned order for the purpose of continuation of the suspension. This Court further finds it relevant to take note of that the Division Bench of this Court in the case of **Rekibuddin Ahmed Vs. State of Assam and Ors.** reported in **2020 (2) GLR 621** had also opined that the principles laid down by the Supreme Court in the case of **Ajay Kumar Choudhury(supra)** would also apply to a case of deemed suspension which is the present case. It is also relevant to take note of that in a very recent judgment by the Division Bench of this Court in the case of **State of Assam Vs. Ajit Sonowal and 3 Others** reported in **2023 SCC Online Gau 731**, the principles laid down by the Division Bench of this Court in the case of **Rekibuddin Ahmed (supra)** were reiterated. Further the Division Bench while concluding in the case of **Ajit Kumar Sonowal(supra)** observed at paragraph 18 as under :

“18. For the reasons stated herein above, we hold that there is no merit in this appeal. However, since Rule 6(1)(a) of the Rules of 1964 permits the authorities to place an employee under suspension when a disciplinary proceeding against him is

contemplated or is pending and considering the fact that disciplinary proceeding has, in the meantime, been initiated against respondent No. 1 by serving a memorandum of charges upon him, we make it clear that this order would not come in the way of the Disciplinary Authority from exercising jurisdiction under Rule 6 (1) of the Rules of 1964 and issue a fresh order of suspension, if so advised."

7. Taking into account the above and as on date there is no Memorandum of Charge/Chargesheet, the further continuation of the suspension order dated 20/9/2022 would be contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary(supra)** and as such this Court directs the respondent authorities, more particularly, the respondent No. 3 to forthwith reinstate the petitioner upon a certified copy of the instant order being served upon the respondent No. 3.

8. This Court further taking into account the mandate of the law declared by the Supreme Court in **Ajay Kumar Choudhary(supra)** grants the liberty to the respondent No. 3 or for that matter the respondent authorities empowered to do so to transfer the petitioner to any of its offices within the State so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the investigation against him. The respondent authorities are further given the liberty to prohibit the petitioner from contacting any person or handling records and documents till the stage of the petitioner having to prepare his defence.

9. This Court further taking note of the recent judgment of the Division Bench of this Court in the case of **Ajit Sonowal(supra)** observes that in the event the Memorandum of Charge is served upon the petitioner, this order would not come in the way of the disciplinary authority from exercising the jurisdiction under Rule 6 (1) of the Rules of 1964 and issue a fresh order of

suspension, if so advised.

10. With the above observations and directions, the instant petition stands disposed off.

JUDGE

Comparing Assistant